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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JENNIFER H.,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Deputy
14 Commissioner of Social Security for
Operations,

15 Defendant.

CASE NO. 2:17-cv-01618 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

16 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and Local
17 Magistrate Judge Rule MJR 13. *See also* Consent Filed by Plaintiff To Proceed Before a
18 Magistrate Judge, Dkt 2. This matter has been fully briefed. *See* Dkt. 12, 13, 14.

19 After considering and reviewing the record, the Court concludes that the ALJ did not
20 commit harmful legal error and that his ruling should be affirmed. Plaintiff argues that the ALJ
21 erred in giving little weight to the opinions of three examining doctors—Dana Harmon, Ph.D.,
22 Alysa Ruddell, Psy.D., and R.A. Cline, Psy.D. Although this Court concludes that the ALJ erred
23 when he relied on lack of mental health treatment as a reason to reject Dr. Harmon's opinion and
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1 further concludes that that ALJ erred when he found that regularly attending appointments and
2 grocery shopping were reasons to reject Dr. Ruddell's opinion, these errors are ultimately
3 harmless because the ALJ provided multiple *other* reasons that were specific, legitimate and
4 supported by substantial evidence when giving little weight to these examining doctors'
5 opinions.

6 Further, the ALJ erred when he found plaintiff not credible insofar as he found that she
7 was her mother's caregiver and he found that her activities of playing games, helping with
8 homework, and driving were inconsistent with her testimony about concentration difficulties.
9 Again, however, these errors are ultimately harmless because the ALJ provided multiple clear
10 and convincing reasons supported by substantial evidence to find that plaintiff was not credible.

11 Accordingly, this Court orders that this matter be **affirmed** pursuant to sentence four of
12 42 U.S.C. § 405(g).

14 BACKGROUND

15 Plaintiff Jennifer H. was born in October 1979 and was 31 years old on the alleged date
16 of disability onset of January 15, 2011. *See* AR. 270. Plaintiff's highest level of education was
17 two years of college. AR. 307. Plaintiff worked as a cashier, truck loader, and shift manager.
18 *See* AR. 307. She left her last job, as a cashier, because of her conditions. AR. 58, 307.

19 According to the ALJ, plaintiff has at least the severe impairments of depressive disorder,
20 anxiety disorder, and degenerative disc disease of the lumbar spine. AR. 37.

21 At the time of the hearing, plaintiff lived in a trailer on her family's property. AR. 81.

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On June 22, 2017, the Appeals Council denied plaintiff's request for review, making the written decision by the ALJ the final agency decision subject to judicial review. AR. 7; *see* 20 C.F.R. § 404.981. Plaintiff filed a complaint in this Court seeking judicial review of the ALJ's written decision in November 2017. *See* Dkt. 4. Defendant filed the sealed administrative record regarding this matter on March 26, 2018. *See* Dkt. 8.

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by

1 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
2 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

3 4 DISCUSSION

5 **1. Medical Opinions**

6 Plaintiff argues that the ALJ erred when she rejected the opinions of Dr. Harmon, Dr.
7 Ruddell, and Dr. Cline, all of whom examined plaintiff. Dkt. 12, at 2–8; *see* AR. 395, 399, 407.
8 Dr. Harmon and Dr. Ruddell opined that plaintiff suffered from marked or marked/severe
9 limitations to her abilities to communicate and perform in a public setting (AR. 401, 406), in
10 contrast to state agency examiners, who opined that plaintiff had at most, moderate social
11 interaction limitations. AR. 117, 130.

12 Dr. Cline opined that plaintiff suffered from moderate to marked limitations to her ability
13 to understand, remember, and persist in tasks by following detailed instructions. AR. 394. In
14 contrast, a state agency examiner opined that plaintiff had no limitation to her ability to carry out
15 detailed instructions and was only moderately limited in maintaining attention and concentration
16 for extended periods. AR. 129.

17 “The opinion of an examining physician is . . . entitled to greater weight than the opinion
18 of a nonexamining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *see also* 20
19 C.F.R. § 404.1527(a)(2) (2012) (“Medical opinions are statements from physicians and
20 psychologists or other acceptable medical sources that reflect judgments about the nature and
21 severity of your impairment(s). . . .”).¹ If contradicted, an examining doctor’s opinion may be
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24 ¹ In 2017, the Administration amended 20 C.F.R. § 404.1527 and re-codified substantially the
same language as 20 C.F.R. § 404.1527(a)(1).

1 rejected for “specific and legitimate reasons that are supported by substantial evidence in the
2 record.” *Lester*, 81 F.3d at 830–31. The opinion of a nonexamining doctor alone cannot be
3 substantial evidence that justifies the rejection of an examining doctor’s opinion. *Lester*, 81 F.3d
4 at 831.

5 *A. Dr. Harmon’s Opinion*

6 Dr. Harmon diagnosed plaintiff with generalized anxiety disorder causing anxiety, social
7 difficulties, and depression and opined that plaintiff suffered marked (“[v]ery significant”)
8 limitations to her ability to communicate and perform effectively in a work setting with public
9 contact. AR. 405–06. The ALJ rejected Dr. Harmon’s opinion for four reasons: (1) the ALJ
10 noted plaintiff’s personality assessment inventory (“PAI”) results suggested exaggeration of
11 symptoms; (2) plaintiff was not receiving mental health treatment at the time; (3) plaintiff’s
12 mental status examination (“MSE”) results were within normal limits; and (4) evidence of dating
13 and attending wrestling matches controverted “marked” social limitations. AR. 43. Plaintiff
14 challenges these reasons. Dkt. 12, at 2–4.

15 At the outset, plaintiff correctly points out that the second reason that the ALJ provided,
16 that plaintiff was not receiving mental health treatment at the time, was not a legitimate reason to
17 reject Dr. Harmon’s opinion. *See* Dkt. 12, at 4. With mental health conditions, “it is a
18 questionable practice to chastise one with a mental impairment for the exercise of poor judgment
19 in seeking rehabilitation.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (quoting
20 *Blankenship v. Bowen*, 874 F.2d 1116, 1124 (6th Cir. 1989)).

21 Regarding the ALJ’s first reason, plaintiff contends that the ALJ erred when he rejected
22 Dr. Harmon’s opinion as inconsistent with plaintiff’s PAI results. Dkt. 12, at 4 & n.1. But
23 inconsistency between a doctor’s recorded observations and her opinion regarding the plaintiff’s
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1 capacities is a legitimate reason to reject the doctor’s opinion. *See Bayliss*, 427 F.3d at 1216.

2 Here the ALJ reasonably found that plaintiff’s PAI score, which Dr. Harmon reported suggested
3 exaggeration or over-reporting of her mental health difficulties, was inconsistent with plaintiff
4 having marked symptoms from her mental health conditions. *See AR*. 43.

5 Plaintiff relies on *Ryan v. Commissioner of Social Security*, which holds that an ALJ does
6 not provide clear and convincing reasons to reject an examining doctor’s opinion “by
7 questioning the credibility of the patient’s complaints where the doctor does not discredit those
8 complaints and supports [her] ultimate opinion with [her] own observations.” 528 F.3d 1194,
9 1199–1200 (9th Cir. 2008). This Court notes that here, the “clear and convincing reasons”
10 standard does not apply because Dr. Harmon’s opinion in this regard was contradicted. *See*
11 *Lester*, 81 F.3d at 830–31. Also unlike *Ryan*, here the ALJ relied on discrepancy between the
12 doctor’s recorded observations about plaintiff’s PAI and her opinion, not on disbelief of
13 plaintiff’s symptoms. *See* 528 F.3d at 1200. The ALJ’s reliance on plaintiff’s PAI scores was a
14 specific and legitimate reason, supported by substantial evidence in the record, to discredit Dr.
15 Harmon’s opinion.

16 Regarding the ALJ’s third reason, plaintiff argues that even if Dr. Harmon’s MSE results
17 were normal, “Dr. Harmon described many clinical findings [that] supported his [sic] opinion.”
18 Dkt. 12, at 4; *see* Dkt. 14, at 3. But where the evidence is susceptible to more than one rational
19 interpretation, we uphold the ALJ’s findings so long as they are supported by inferences
20 rationally drawn from the record. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). It is
21 the role of the ALJ, not this Court, to resolve conflicts and ambiguities in the record. *Andrews v.*
22 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

1 Here, Dr. Harmon documented that plaintiff scored well (29/30) on a “MiniMental Status
2 Examination,” including being well-oriented to time and place, having intact short-term memory,
3 being able to subtract serial 7s and spell “world” forward and backward, and having reading
4 comprehension, writing, visual-spatial, and short-term memory abilities. AR. 410. Plaintiff’s
5 only deficiency was scoring a 2/3 on her listening comprehension skill. AR. 410. Moreover, Dr.
6 Harmon otherwise documented plaintiff’s appropriate appearance, normal alertness, “above-
7 average/gifted” intellectual functioning, and intact memory, concentration, and abstract
8 reasoning. AR. 408–09. In light of these findings, the ALJ could rationally conclude that
9 plaintiff’s conditions did not limit her ability to communicate and perform effectively in a public
10 function to the extent that Dr. Harmon believed they did.

11 Fourth, plaintiff argues that online dating and attending wrestling matches were not
12 legitimate reasons to reject Dr. Harmon’s opinion. Dkt. 12, at 4. In this regard, the ALJ relied
13 on evidence that in 2012, plaintiff entered into her first romantic relationship (AR. 570) and
14 “decided” to go to—and later reported going to—“all of” her nephew’s wrestling matches. AR.
15 518, 521. A conflict between a medical opinion and a claimant’s daily activities may be a
16 specific and legitimate reason to discount the opinion. *See Ghanim v. Colvin*, 763 F.3d 1154,
17 1162 (9th Cir. 2014).

18 Contrary to plaintiff’s arguments, the evidence that plaintiff entered into a romantic
19 relationship in 2012 and reported going to all of her nephew’s wrestling matches of her own
20 volition contradicts Dr. Harmon’s opinion about plaintiff’s limitations. Although plaintiff argues
21 that her medical records show her psychiatrist recommended that she go to the matches, the
22 record states that it was plaintiff who “decided” to go to the matches because “this way she can
23 get out of the house.” AR. 521. Plaintiff points to a September 2012 record that plaintiff met
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1 people online because she “use to meet [people] [at] school or at work but does not do those
2 things anymore” and “does not know where else to meet [people].” AR. 542. However, this
3 evidence supports the ALJ’s finding because it shows that plaintiff sought to continue interacting
4 with people and took affirmative steps to do so.

5 In sum, the ALJ erred when he relied on plaintiff’s lack of mental health treatment in
6 2011 as a reason to discount Dr. Harmon’s opinion. However, the ALJ’s other reasons for
7 discounting Dr. Harmon’s opinion were specific, legitimate, and supported by substantial
8 evidence.

9 *B. Dr. Ruddell’s Opinion*

10 Like Dr. Harmon, Dr. Ruddell diagnosed plaintiff with an anxiety disorder and opined
11 that plaintiff suffered from “Marked/Severe” limitations to her ability to communicate and
12 function in a public setting. AR. 401. The ALJ found that Dr. Ruddell’s assessment was
13 inconsistent with the daily activities of regularly attending appointments and wrestling matches,
14 dating, and shopping and with the medical evidence. AR. 43.

15 Plaintiff argues that the noted daily activities are not inconsistent with Dr. Ruddell’s
16 opinion. Dkt. 12, at 6. As discussed earlier, substantial evidence in the record supports the
17 ALJ’s finding that plaintiff attended wrestling matches, where she interacted with others, and
18 that she met a partner online in 2012. *See supra*, part (1)(A). The ALJ legitimately found these
19 activities inconsistent with the marked/severe social limitations that Dr. Ruddell assessed.

20 However, this Court agrees with plaintiff that her testimony about grocery shopping is
21 not reasonably viewed as inconsistent with Dr. Ruddell’s assessment of social limitations. *See*
22 Dkt. 12, at 6. Plaintiff testified that she grocery shopped only as often as once a month because
23 of her anxiety, which made her “too afraid to go to the store.” AR. 77. Moreover, the ALJ did
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1 not explain why “regularly attending” medical appointments demonstrated improved mental
2 functioning. *See* AR. 43. Because the ALJ failed to provide a specific, legitimate reason, the
3 ALJ erred in this regard.

4 *C. Dr. Cline’s Opinion*

5 Dr. Cline examined plaintiff in October 2012 and diagnosed her with a major depressive
6 disorder, “recurrent, moderate” and anxiety disorder “NOS, with features of panic disorder.”
7 AR. 394. He determined that plaintiff suffered from moderate depression/lack of motivation,
8 mild to moderate anxiety/panic, and moderate insomnia/hypersomnia. AR. 393. Dr. Cline rated
9 plaintiff as having moderate to marked limitations to her abilities to understand, remember, and
10 persist in tasks by following detailed instructions. AR. 394–95.

11 The ALJ rejected Dr. Cline’s opinion on the basis that it was inconsistent with his MSE
12 results. AR. 43. Notably, Dr. Cline documented that plaintiff’s thought process, orientation,
13 perception, memory, fund of knowledge, concentration, and abstract thought were all within
14 normal limits. AR. 385. He recorded that plaintiff could immediately and after five minutes
15 recall three objects, could perform a three-step task, could count by serial 3’s but made errors
16 counting by serial 7’s, and had no memory impairment. AR. 386. Dr. Cline’s test results also
17 showed that plaintiff suffered only mild anxiety and moderate depression. *See* AR. 382. Again,
18 conflict between a doctor’s recorded observations and his opinion may be a legitimate reason to
19 discredit the opinion. *See Bayliss*, 427 F.3d at 1216.

20 Plaintiff argues that the ALJ should have given more weight to clinical findings
21 consistent with Dr. Cline’s opinion. Dkt. 12, at 8. Namely, plaintiff argues that the ALJ should
22 not have discounted Dr. Cline’s opinion because it derived from his finding that plaintiff suffered
23 from depression/anxiety/insomnia symptoms, his observation that plaintiff had a “[s]lightly
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1 dysthymic” mood and flat affect, and test results that showed effort and task cooperation. Dkt.
2 12, at 6–7. But the ALJ properly found that the majority of Dr. Cline’s observations and findings
3 were inconsistent with his conclusion about plaintiff’s limitations. In doing so, the ALJ provided
4 specific and legitimate reasons, supported by substantial evidence, for discrediting Dr. Cline’s
5 opinion.

6 *D. Remaining Issues*

7 Plaintiff summarizes evidence consistent with Dr. Harmon’s, Dr. Cline’s, and Dr.
8 Ruddell’s opinions and appears to argue that the ALJ erred because he should have accepted the
9 doctors’ opinions as consistent with the record as a whole. Dkt. 12, at 10. Again, however,
10 where the evidence in the record supports more than one rational interpretation, this Court defers
11 to the ALJ’s interpretation of the record, so long as it is rational. *See Tommasetti v. Astrue*, 533
12 F.3d 1035, 1038 (9th Cir. 2008). Here, as set forth above, the ALJ provided specific, legitimate
13 reasons supported by substantial evidence in the record for not crediting Dr. Harmon’s, Dr.
14 Cline’s, and Dr. Ruddell’s opinions. In doing so, the ALJ also found that conflicting opinions
15 were more consistent with the record. AR. 44; *see also Tonapetyan v. Halter*, 242 F.3d 1144,
16 1149 (9th Cir. 2001) (when consistent with other independent evidence in the record, a
17 nonexamining doctor’s opinion may constitute substantial evidence).

18 Plaintiff also conclusorily argues that the ALJ erred in rejecting other limitations
19 described by Drs. Harmon, Ruddell, and Cline. Dkt. 12, at 4, 6, 8. This Court disagrees that the
20 ALJ failed to account for these other limitations. In addition to the limitations addressed above,
21 these doctors also opined that plaintiff had marked to severe limitations to her ability to adapt to
22 change (AR. 401), marked limitations to her ability to complete a normal workday/workweek
23 without interruption (AR. 395), and moderate limitations to a number of basic work activities
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1 including completing tasks and performing on a regular schedule without supervision. *See* AR.
2 401. However, the ALJ included a number of limitations in the RFC related to plaintiff's basic
3 work abilities. In addition to limiting interactions with the public, coworkers, and supervisors
4 and requiring occupations dealing with things, not people, the RFC required only occasional
5 changes to the work environment and an allowance for being off-task 10% of an 8-hour
6 workday. AR. 39.

7 The RFC assessment is within the ALJ's purview—not a doctor's. *Vertigan v. Halter*,
8 260 F.3d 1044, 1049 (9th Cir. 2001); 20 C.F.R. §§ 404.1546, 416.946. The ALJ need not adopt
9 identical limitations to those recommended by doctors. *See* 20 C.F.R. §§ 404.1527(d)(2) (the
10 final responsibility for deciding the RFC is reserved to the Administration), 416.927(d)(2). Here,
11 the ALJ included in the RFC limitations related to plaintiff's ability to complete tasks and
12 normal work hours, perform on a regular schedule without supervision, and adapt to changes
13 when the ALJ formulated an RFC with only occasional environmental changes and an allowance
14 for being off-task. *See* AR. 39. Neither does plaintiff set forth any arguments as to how
15 particular limitations were not adequately addressed by the RFC. Thus this Court does not
16 conclude that the ALJ rejected the other limitations described by Drs. Harmon, Ruddell, and
17 Cline.

18 **2. Credibility**

19 "In assessing the credibility of a claimant's testimony regarding subjective pain or the
20 intensity of symptoms, the ALJ engages in a two-step analysis." *Molina*, 674 F.3d at 1112.
21 "First, the ALJ must determine whether there is 'objective medical evidence of an underlying
22 impairment which could reasonably be expected to produce the pain or other symptoms
23 alleged.'" *Id.* (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)) (citation omitted).

1 “If the claimant has presented such evidence, and there is no evidence of malingering, the ALJ
2 must give ‘specific, clear and convincing reasons’ in order to reject the claimant’s testimony
3 about the severity of the symptoms.” *Id.* (quoting *Vasquez*, 572 F.3d at 591) (citation omitted).

4 The ALJ found that plaintiff’s symptoms could reasonably be expected to cause some of
5 her alleged symptoms but that her statements about the symptoms’ intensity, persistence, and
6 limiting effect were not entirely consistent with the record. AR. 40. Plaintiff challenges a
7 number of the ALJ’s findings in this regard, as set forth more fully below.

8 Regarding plaintiff’s claims about her physical symptoms, first, plaintiff argues that it
9 was error for the ALJ to find “‘minimal complaints’” of physical pain in light of plaintiff’s
10 testimony that she put off attending medical appointments so she would not “‘have to go
11 anywhere.’” Dkt. 12, at 11 (quoting AR. 40, 78). Although plaintiff testified that she put off
12 appointments for things such as stomach pain, she did so as part of her discussion of anxiety
13 symptoms. AR. 78; *see* AR. 76–79. Her testimony was that she sought to avoid these
14 appointments because of anxiety, not back pain-related limitations. Thus this testimony is
15 consistent with plaintiff having minimal complaints of back pain symptoms.

16 Second, plaintiff argues that the ALJ failed to provide convincing reasons for finding
17 plaintiff’s physical conditions as “‘benign’” in light of three records inconsistent with such a
18 finding. Dkt. 12, at 11 (quoting AR. 40). In two of these records, from 2013, providers
19 diagnosed plaintiff with chronic right hip pain and acute leg numbness (AR. 506) and chronic
20 right side sciatica and acute compression neuropathy (AR. 681). In the third record, from 2014,
21 plaintiff reported lower back and associated thigh pain. AR. 841.

22 However, the ALJ took into account the three records that plaintiff cites when the ALJ
23 rendered his decision. *See* AR. 40. First, from the 2013 records, the ALJ noted that physical
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1 examination showed normal results. *See* AR. 509 (“no abnormality,” “[n]o kyphosis,” “[n]o
2 scoliosis,” “[n]ormal flexion,” “[n]ormal extension,” “[n]o tenderness”). March 2013 x-rays
3 further showed “[s]traightened alignment” of the spine without evidence of “anterior
4 compression deformity” or “significant decrease in height of the joint spaces.” AR. 625. The
5 ALJ acknowledged that plaintiff reported worsened pain in May 2013 but noted that her treating
6 doctor recommended treatment with exercise. AR. 40, 681. Moreover, in 2014, when plaintiff
7 reported increased pain, her physician noted that the MRI was “essentially benign” and showed
8 no findings explaining her symptoms. AR. 40, 843. Thus, the ALJ provided clear and
9 convincing reasons supported by substantial evidence when he found that plaintiff’s physical
10 conditions were not as severe as plaintiff claimed.

11 Third, plaintiff argues that the evidence that the ALJ relied on as contradicting plaintiff’s
12 claim she had not exercised in about 2 years in fact corroborates her testimony. *See* Dkt. 12, at
13 11. To the contrary, the ALJ relied on a 2015 report stating that plaintiff exercised 2–3 times per
14 week and 0–5 hours per week—a statement directly contradicting plaintiff’s testimony that she
15 had not exercised since about 2014. *See* AR. 41, 847. Plaintiff argues that the report “may have
16 been pre-filled” with information, but the record does not support that this medical record merely
17 duplicates a prior history note. *Compare* AR. 847 *with* AR. 502, 620, 684.

18 This Court agrees with plaintiff that substantial evidence does not support a finding that
19 plaintiff was her mother’s caregiver. *See* Dkt. 12, at 12; AR. 41, 450. However, the record does
20 support the ALJ’s remaining reasons for finding plaintiff’s physical activity inconsistent with her
21 claims of physical pain: plaintiff stated that she cooked daily (AR. 400) and gardened (AR. 562,
22 574, 587, 594, 794, 821).

1 Regarding the ALJ’s finding that plaintiff’s mental symptom testimony was not credible,
2 plaintiff first argues that the ALJ improperly recited the medical testimony in support of his
3 residual functional capacity determination rather than properly specifying the testimony he found
4 not credible and then giving clear and convincing reasons to support the determination. Dkt. 12,
5 at 12; *see Brown-Hunter v. Colvin*, 806 F.3d 487, 489 (9th Cir. 2015). But in *Brown-Hunter*, the
6 ALJ erred because she simply stated her non-credibility conclusion—that the claimant’s
7 statements concerning the intensity, persistence, and limiting effects of the symptoms were not
8 credible to the extent that they were inconsistent with the RFC—and failed to identify which
9 statements she found not credible and why. *Id.* at 493. Here, in contrast, the ALJ stated that
10 plaintiff had testified that her anxiety and depression were disabling. *See* AR. 41. Then the ALJ
11 set forth over a page of evidence that contradicted plaintiff’s testimony in this regard, including
12 multiple normal mental status examination results and statements that medication helped
13 plaintiff. *See* AR. 41–42. In doing so, the ALJ did not err under *Brown-Hunter* because the ALJ
14 stated which testimony he found not credible and then set forth clear and convincing reasons to
15 support that determination.

16 Second, plaintiff argues that the ALJ erred in finding that plaintiff’s 2015 activities were
17 inconsistent with her testimony that her anxiety and depression were disabling. Dkt. 12, at 12–
18 13. Daily activities may form the basis for an adverse credibility determination where they
19 contradict a plaintiff’s other testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). Here,
20 the ALJ found that evidence that plaintiff left her trailer daily and her property 1–2 times weekly
21 contradicted plaintiff’s testimony that she rarely went out due to anxiety. *See* AR. 42.
22 Substantial evidence supports the ALJ’s finding, which was in conflict with plaintiff’s testimony.
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1 See AR. 815 (plaintiff reported that she left her trailer daily and the family property 1–2 times
2 weekly with no panic for months, a “big improvement”).

3 Third, plaintiff argues that the ALJ erred when she found that plaintiff’s MSE results
4 contradicted her testimony about concentration issues. Dkt. 12, at 13; *see* AR. 42. Although
5 plaintiff argues that the MSE results were consistent with plaintiff’s testimony, plaintiff’s MSE
6 results repeatedly showed normal concentration. *See* AR. 377, 396, 409, 804, 822. The ALJ
7 properly took this inconsistent objective medical evidence into account when he determined
8 plaintiff’s credibility. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

9 However, this Court agrees with plaintiff that the ALJ erred when he stated that
10 plaintiff’s activities of playing games on her phone, helping her mother with litigation issues,
11 helping her nephews with homework, and driving were inconsistent with her testimony about
12 lack of concentration. *See* Dkt. 12, at 13; AR. 42. Notably, plaintiff did not testify that she
13 lacked the ability to concentrate entirely. Instead she testified that she struggled with focusing
14 on difficult tasks, such as reading letters from DSHS. AR. 74.

15 Fourth, plaintiff argues that the ALJ erred when he found examples of plaintiff’s social
16 functioning that contradicted her testimony that she rarely went out due to anxiety and avoided
17 socializing with others. Dkt. 12, at 13. The ALJ relied on evidence that plaintiff entered into her
18 first romantic relationship in 2012, with a man she met online. AR. 570. Plaintiff also attended
19 “all of” her nephew’s wrestling matches, where she socialized with others. AR. 518. Plaintiff
20 reported that she attended the matches of her own volition, so that she could leave the house.
21 AR. 521. In 2013, plaintiff “ke[pt] busy” taking her nephew to his extracurricular activities.
22 AR. 441. And in 2015, as set forth above, plaintiff reported leaving her home daily and her
23 property one or two times weekly. AR. 815. Thus the ALJ provided clear and convincing
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1 reasons supported by substantial evidence for finding plaintiff's activities contradicted her
2 testimony about her social functioning.

3 **3. Harmless Error**

4 "[H]armless error principles apply in the Social Security Act context." *Molina*, 674 F.3d
5 at 1115. An error is harmless if it is inconsequential to the ultimate nondisability determination.
6 *Id.*

7 As set forth above, the ALJ provided specific, legitimate reasons supported by substantial
8 evidence in the record when he found that Dr. Harmon's recorded observations of plaintiff's PAI
9 and mental status examination results and plaintiff's daily activities were inconsistent with Dr.
10 Harmon's limitations on plaintiff's ability to work in a public environment. Although the ALJ
11 also provided a reason that was not legitimate—failure to receive mental health treatment—the
12 error in this regard was harmless because the ALJ provided three proper reasons to discredit Dr.
13 Harmon's opinion. *See Carmickle v. Cmm'r*, 533 F.3d 1155, 1162 (9th Cir. 2008).

14 Regarding Dr. Ruddell's opinion, the ALJ provided specific, legitimate reasons supported
15 by substantial evidence in the record when he found plaintiff's frequently attending wrestling
16 matches where she socialized with others and online dating were inconsistent with the
17 marked/severe social limitations that Dr. Ruddell assessed. Although the ALJ also noted two
18 activities—grocery shopping and attending appointments—that were not specific and legitimate
19 reasons to discount Dr. Ruddell's opinion, any error in this regard was harmless because the
20 ALJ's findings regarding wrestling and dating were specific, legitimate and supported by
21 substantial evidence in the record.

1 Further, regarding Dr. Cline's opinion, the ALJ's reliance on plaintiff's inconsistent
2 mental status examination results was a specific, legitimate reason supported by substantial
3 evidence to discredit Dr. Cline's opinion.

4 This Court notes that the ALJ in fact found that plaintiff did have some social and
5 concentration limitations. *See* AR. 43–44. The ALJ included in the RFC that plaintiff could
6 have only occasional superficial interactions with coworkers and superficial interactions with the
7 general public, should have occupations dealing with objects rather than people, and would be
8 off task 10% over an 8-hour workday. AR. 39. And because the ALJ provided specific,
9 legitimate reasons supported by substantial evidence in the record to discredit the examining
10 physicians' opinions about the severity of plaintiff's social and concentration limitations, the
11 errors identified above were harmless.

12 Regarding plaintiff's credibility, although the ALJ erred when he found that plaintiff's
13 daily activities controverted her testimony about concentration issues and that plaintiff had been
14 her mother's caregiver, the ALJ otherwise provided clear and convincing reasons supported by
15 substantial evidence in the record when he found plaintiff not credible. Even where an ALJ
16 provides some invalid reasons to support an adverse credibility determination, reliance on those
17 reasons is harmless error if "there remains 'substantial evidence supporting the ALJ's
18 conclusions on . . . credibility' and the error 'does not negate the validity of the ALJ's ultimate
19 [credibility] conclusion.'" *Carmickle*, 533 F.3d at 1162 (quoting *Batson v. Comm'r of Soc. Sec.*
20 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)).

21 Here the ALJ provided valid reasons to support his credibility determination. He found
22 that the record controverted the severity of plaintiff's alleged back pain; her testimony that she
23 had not exercised in about 2 years; her claim that her anxiety and depression were disabling; her
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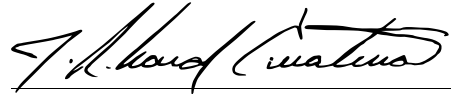
1 testimony that she could not concentrate, in light of mental status examination results; and her
2 testimony that she rarely went out due to anxiety and avoided socializing with others, in light of
3 her attending wrestling matches and online dating. In view of these valid reasons, this Court
4 finds that the error in the credibility determination was harmless.

5
6 CONCLUSION

7 Based on these reasons and the relevant record, the Court **ORDERS** that this
8 matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

9 **JUDGMENT** should be for the defendant, and the case should be closed.

10 Dated this 27th day of November, 2018.

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12 J. Richard Creatura
13 United States Magistrate Judge
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